

REMARKS

This is a full and timely response to the outstanding non-final Office Action mailed June 25, 2007. Through this response, claims 1, 7, 13, 20, and 26 have been amended. Reconsideration and allowance of the application and pending claims 1-30 are respectfully requested.

I. Claim Rejections - 35 U.S.C. § 101

Claims 1-30 have been rejected as allegedly directed to non-statutory subject matter. In particular, the Office Action (page 2) alleges that the results "produced by the inventions do not have real world value but merely numerical values without a practical application recited in the claims to make the results useful, concrete and tangible." Although Applicants disagree, in the interest of expediting allowance, Applicants have (consistent with MPEP 2106) amended the claims to recite an exemplary practical application of generating a random number, which as set forth in Applicants' disclosure as well as the art of record, has significance in secure transactions (e.g., using encryption methodologies) as well as gaming applications (see, e.g., U.S. Pat. No. 6,728,740, column 1).

In view of the above-noted claim amendments, Applicants respectfully submit that the rejection has been rendered moot, and respectfully request that the rejection be withdrawn.

II. Claim Rejections - 35 U.S.C. § 102(e)

A. Statement of the Rejection

Claims 26-30 have been rejected under 35 U.S.C. § 102(e) as being allegedly anticipated by *Kelly et al.* ("Kelly," U.S. Pat. No. 6,728,740). Applicants respectfully traverse this rejection.

B. Discussion of the Rejection

It is axiomatic that "[a]nticipation requires the disclosure in a single prior art reference of each element of the claim under consideration." *W. L. Gore & Associates, Inc. v. Garlock, Inc.*, 721 F.2d 1540, 1554, 220 USPQ 303, 313 (Fed. Cir. 1983). Therefore, every claimed feature of the claimed invention must be represented in the applied reference to constitute a proper rejection under 35 U.S.C. § 102(e).

In the present case, not every feature of the claims is represented in the *Kelly* reference. Applicants discuss the *Kelly* reference and Applicants' claims in the following.

Independent Claim 26

Claim 26 recites (with emphasis added):

26. A random bit stream generator comprising:
means for accumulating a plurality of hardware driven numbers;
means for extracting a portion of each hardware driven number; and
means for combining each extracted portion to form a random bit stream,
the random bit stream comprising a random number for use in a consuming
process.

Applicants respectfully submit that *Kelly* fails to disclose, teach, or suggest at least the above-emphasized claim features. According to MPEP 2183, factors that support a conclusion of equivalence are as follows:

- (A) the prior art element performs the identical function specified in the claim in substantially the same way, and produces substantially the same results as the corresponding element disclosed in the specification...

B) a person of ordinary skill in the art would have recognized the interchangeability of the element shown in the prior art for the corresponding element disclosed in the specification.

(C) there are insubstantial differences between the prior art element and the corresponding element disclosed in the specification.

(D) the prior art element is a structural equivalent of the corresponding element disclosed in the specification.

Applicants respectfully submit that the Office Action has not met its burden pertaining to these factors. That is, none of these factors, or an analysis thereof, have been set forth in the Office Action as required by MPEP 2183. Notwithstanding this deficiency in the rejection, Applicants respectfully submit that an analysis of each of these factors would reasonably result in a conclusion that the elements found in *Kelly* are not equivalent to those pertaining to at least the structure or elements pertaining to the above-emphasized claim language. For instance, reviewing factor "A," even assuming *arguendo* that *Kelly* performs an identical function pertaining to the above-emphasized claim feature of **means for extracting** (the admission of which is neither expressed nor implied), *Kelly* utterly fails to disclose performing such features in substantially the way to produce the same results.

Several exemplary excerpts from *Kelly* are provided below that reveal some distinctions in the mechanism employed by systems in *Kelly* as compared to Applicants' system:

[col. 2, lines 19-21] one or more of the counters within the system are read and the count value is appended to previously captured counter values until the desired seed length is obtained.

[col. 2, lines 63-65] It is the ephemeral count per se captured from the counter(s) at one or more particular times ("event times"), that forms an element of the invention.

[col. 3, lines 1-2] causes the current count value of the associated counter to be captured and loaded into register 14,...

[col. 3, lines 8-23] If a single counter and sensor combination are utilized, the captured output of counter number 1 will be sequentially input to register 14 each time event sensor member 1 senses the occurrence of an event (at an "event time") and such action will repeat until a predetermined number of events have been sensed, at which time it is determined that the seed register 14 is full. Alternatively, a seed register full detector 22 may be used to generate a sensor disable signal for disabling sensor number 1. Depending upon the type of RNG utilized, register 14 may offload the entire seed to the RNG, and be zeroed out, or it may form part of several registers or a circulating loop such that the seed continuously circulates through the RNG 10 as part of the random number generating function. At this time, the RNG 10 is said to be seeded and is ready to commence generation of random numbers at its output 24.

It is clear from these sections and others of *Kelly* that the entire or complete counter value is extracted, and not a **portion** of a hardware generated value less than the whole as disclosed in Applicants' disclosure.

As to factor "B," Applicants respectfully submit that these distinctions, as highlighted in the reproduced sections above, are readily apparent to one having ordinary skill in the art, and hence one having ordinary skill in the art would not reasonably recognize an interchangeability between elements in Applicants' disclosure and elements in *Kelly*'s disclosure. With regard to factors "C" and "D," Applicants respectfully submit that the differences between the elements disclosed in Applicant's disclosure and *Kelly* are not insubstantial, for at least the reason that *Kelly* not only fails to disclose extraction of less than the whole, but also fails to even suggest extraction of less than the whole. For at least these reasons, Applicants respectfully submit that the Office Action has not established equivalence of the structures in *Kelly* with those pertaining to claim 26, and indeed, equivalence cannot reasonably be established. Accordingly, Applicants respectfully request that the rejection be withdrawn.

Because independent claim 26 is allowable over *Kelly*, dependent claims 27-30 are allowable as a matter of law for at least the reason that the dependent claims 27-30 contain

all elements of their respective base claim. See, e.g., *In re Fine*, 837 F.2d 1071 (Fed. Cir. 1988).

Due to the shortcomings of the *Kelly* reference described in the foregoing, Applicants respectfully assert that *Kelly* does not anticipate Applicants' claims. Therefore, Applicants respectfully request that the rejection of these claims be withdrawn.

CONCLUSION

Applicants respectfully submit that Applicants' pending claims are in condition for allowance. Favorable reconsideration and allowance of the present application and all pending claims are hereby courteously requested. If, in the opinion of the Examiner, a telephonic conference would expedite the examination of this matter, the Examiner is invited to call the undersigned attorney at (770) 933-9500.

Respectfully submitted,

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